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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

NO. 268

EDWARD G. PARTIN, Business Agent, General Truck Drivers, Chauffeurs, Warehousemen & Helpers of America, Local No. 5, etc., ET AL,
Petitioners,

versus

NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

Teddy W. Airhart, Jr.
208 St. Louis Street
Baton Rouge, Louisiana

William C. Bradley
P. O. Box 475
Baker, Louisiana
ATTORNEYS FOR PETITIONER

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on February 10, 1966.

CITATIONS TO OPINIONS BELOW

The decision of the Trial Examiner is reported at 148 NLRB No. 88 and is printed in Appendix B hereto, infra, p.7 (R-41). The decision and order of the National Labor Relations Board is also printed in Appendix B hereto, infra p. 32 (R-72), and is reported in 148 NLRB No. 88. The opinion of the Circuit Court of Appeals is printed in Appendix B hereto, infra p. 35 .

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on February 10, 1966, p. 35 infra. Rehearing was denied on March 21, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

QUESTION PRESENTED

Whether petitioner is to be held subject to a decision of the National Labor Relations Board when through no fault of his own he was not able to appear before the Trial Examiner and present his case.

STATUTE INVOLVED

The statutory provisions involved are 29 U.S.C. Sec. 160 (6) of the National Labor Relations Act, which is printed in Appendix A., infra. p. 6 .

STATEMENT

This proceeding was initially brought under Section 10 (b) of the National Labor Relations Act, as amended (61 Stat.136, 73 Stat. 519, 29 U.S.C. Sec. 151, et seq.). A complaint was issued on

August 13, 1963, by the General Counsel of the National Labor Relations Board based on a charge dated January 12, 1963, which alleged in substance that petitioner herein, Edward G. Partin, had engaged in unfair labor practices proscribed by Section 8 (b) (1) (A) and (2) of the Act by attempting to cause and by causing Ryder Truck Lines, Inc., to discharge Calvin C. Clary for reasons unrelated to his failure to tender or pay the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in Local No. 5.

On the date of the original hearing before the Trial Examiner held on March 25, 1964, petitioner's counsel was advised by telephone that the hearing had been cancelled and passed without date and would be re-scheduled (See Appendix "C" to printed record). In addition the said proceedings before the Trial Examiner, held March 25, 1964, convened in the State Capitol Building, Baton Rouge, Louisiana, and without prior notice to the parties or their counsel, adjourned the hearing to Room 327 in the main Post Office Building at 709 Florida Street, Baton Rouge, Louisiana. Upon neither the petitioner, Edward G. Partin, or his counsel appearing at this said hearing and without making any inquiry whatsoever to determine the cause of their absences, the Trial Examiner proceeded to hear testimony.

As a result of this hearing, the Trial Examiner decided that petitioner, Partin, had engaged in unfair labor practices in violation of Sections 8 (b) (1) (A) and 2 of the Act, (R-52). Exceptions to this decision by the Trial Examiner were filed by

petitioner (R-65); but these exceptions were overruled by a decision of the National Labor Relations Board (R-72-74). The Court of Appeals affirmed the decision of the National Labor Relations Board and denied petitioner's motion for leave to adduce additional evidence and petition for review.

REASONS FOR GRANTING THE WRIT

The decision of the Court below in the instant case is in conflict with the decision of the Eighth Circuit Court of Appeals in Mississippi Valley Structural Steel Co. v. National Labor Relations Board, 145 F (2d) 664. In that case, petitioner was required to withdraw from a hearing before a Trial Examiner because his counsel was out of State for health reasons. The hearing was held without petitioner and the Trial Examiner sustained the charges against petitioner. The Eighth Circuit Court of Appeals in ordering the Board to afford to the petitioner an opportunity to adduce additional evidence stated:

> "We think that under the circumstances of this case, this Court is justified in treating the petition for review as including an application by petition for leave to adduce additional evidence. This Court has discretion to see that before a party's rights are finally foreclosed his case has been fairly heard. We are satisfied that petitioner can produce evidence which is relevant and material and which was not before the Board, and that there were reasonable grounds for the failure of petitioner to adduce it at the hearing before the Trial Examiner."

In the instant case, it is evident that petitioner, through no fault of his own, has not even been afforded an opportunity to present his case. As such, petitioner has been as fully deprived of his basic right to present his case as if he had not received notice of the hearing. It should be emphasized that petitioner had no reasons whatsoever to question the message left at the office.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Teddy W. Airhart, Jr.
Counsel for petitioner

William C. Bradley
Counsel for petitioner

Dated June 13, 1966

APPENDIX A

29 USC Sec. 160 (b). Complaint and notice of hearing; answer, court rules of evidence applicable.

> "Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board of a member thereof, or before a designated agent or agency at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby, was prevented from filing such charge by reason of service in the armed forces, in which event the six month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent or agency conducting the hearing or the Board."

APPENDIX B

TRIAL EXAMINER'S DECISION

TXD-232-64 Baton Rouge, La.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

EDWARD G. PARTIN, BUSINESS AGENT, GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, Local No. 5, Affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, INC.

Case No. 15-CB-622

and

CALVIN C. CLARY

David L. McComb, Esq., for the General Counsel
William C. Bradley, Esq., of Baker, La., for Respondent.
Roy Maughan and J. H. Bankston, Esqs. (Maughan & Bankston), of Baton Rouge, La., for the Charging Party.
Before: George A. Downing, Trial Examiner.

Statement of the Case

This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 163, 73 Stat. 519), was heard at Baton Rouge, Louisiana, on March 17 and 25, 1964, pursuant to due notice. The complaint, issued on August 13, 1963, by the General Counsel of the National Labor Relations Board on a charge dated January 12, 1963, alleged in substance that Respondent Partin engaged in unfair labor practices proscribed by Section 8(b)(1)(A) and (2) of the Act by attempting to cause and by causing Ryder Truck Lines, Inc. (Ryder herein) to discharge Calvin C. Clary for reasons unrelated to his failure to tender or pay the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in Local No. 5 (Union herein). By its answer filed on August 28, Respondent denied the allegations of unfair labor practices.[1]

---

[1]Respondent's answer was filed by Victor H. Hess, Jr., Esq., of the firm of Jackson & Hess, of New Orleans, Louisiana, who withdrew as counsel on February 18, 1964. Upon the opening of the hearing on March 17, William C. Bradley, Esq., entered his appearance as counsel for Respondent, and upon his motion, a continuance was granted to March 25 in order to enable Bradley to prepare for the hearing. When the hearing was resumed on March 25, no one appeared for Respondent. On April 1, George Bokat, Chief Trial Examiner, wrote Mr. Bradley (see Appendix B, hereto) seeking an explanation of his failure to appear in view of the fact that the continuance was granted on his motion. On April 28, when this Decision was being stenciled, Mr.

The only issue is whether, as alleged in the complaint, Respondent caused and attempted to cause Ryder to discharge Clary for some reason other than his failure to tender the periodic dues and initiation fees uniformly required by the Union.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. Jurisdictional findings

Ryder, a Florida corporation with its principal office in Jacksonville, Florida, is a certificated common carrier of general commodities in interstate commerce by motor vehicle. It maintains a truck terminal in Baton Rouge, Louisiana, the only terminal involved in this proceeding. During the 12 months prior to this pro-

---

Bokat received a reply from Mr. Bradley dated April 25 (see Appendix C, hereto), representing that he did not appear at the reconvened hearing because he received some message (from an unverified and undisclosed source) that the hearing had been cancelled and would be rescheduled and in which he requested that the matter be *continued* so as to permit Respondent to present his evidence and to file a brief.

That request, referred to me by the Chief Trial Examiner, is now hereby denied as I find that Mr. Bradley's letter lays no adequate basis for his request, whether it be considered as a motion for a continuance or as a motion to reopen the hearing.

ceeding, Ryder derived from its Baton Rouge terminal gross revenues in excess of $50,000 for services performed in interstate commerce. Ryder is therefore engaged in commerce within the meaning of Section 2(6) of the Act.

II. The labor organization involved

Local No. 5 is a labor organization within the meaning of Section 2(5) of the Act.

III. The unfair labor practices

A. *The evidence*

Calvin C. Clary was formerly employed by Herrin Transportation of Baton Rouge, but went with Ryder in May 1961, as a city pickup and delivery driver in Baton Rouge. There was no break in his employment between the two jobs. He joined Local No. 5 in January 1959, while with Herrin, and his dues were deducted from the payroll.

Ryder was a party with the Southern Conference of Teamsters to a local freight forwarding pickup and delivery agreement which was in effect from February 1, 1961, to January 31, 1964, and which contained the following union-shop provision:

> All present employees who are members of the Local Union on the effective date of this subsection or on the date of execution of this agreement whichever is later, shall remain members of the Local Union in good standing as a condition of employment. All present em-

ployees who are not members of the Local Union and all employees who are hired hereafter shall become and remain members in good standing of the Local Union as a condition of employment on and after the 31st day following the beginning of their employment or on and after the 31st day following the date of execution of this subsection, whichever is the later ....

The contract also contained a checkoff clause under which the employer agreed to deduct the union dues of employees upon written authorization, signed by the employee, to be delivered to the employer by the Union and upon a certified list, to be furnished to the employer each month by the Union, of such of its members who had signed authorizations.

Though Clary's dues were not under a checkoff authorization when he first went with Ryder, he signed such an authorization at Ryder's office on June 1, 1961, on forms which were supplied by the Union, and the original was forwarded, along with Clary's employment application, to Ryder's Houston office. Under the normal practice which the Union followed, the job steward would bring two copies of the signed forms back to the Union's office. In addition to signing the required number of authorization forms, Clary also gave the Union on May 31 his personal check for $5, covering a month's dues.

So far as Ryder was concerned, all that an employee was required to do in order to have his dues deducted was to sign the authorization certificate. However, under the practice which Ryder and the Union fol-

lowed, Ryder made the deductions of union dues only from a monthly checkoff list when furnished by the Union, and it never challenged either the names or the amounts listed by the Union.

When Clary learned that his dues were not being checked off, he spoke to Partin about it some month and a half after May 31, explaining that he had signed an authorization form but that evidently either the Company or the Union had lost it. Partin assured Clary that if he had proof (concerning the authorization) he need not worry about it and the matter would be taken care of. It was not taken care of, however, and Clary went to the union office on October 4, 1961, to pay his arrearages (then $20), but the clerical employee on duty refused to accept his check, stating that it would have to be okayed by Partin, because after 3 months Clary was automatically suspended from the Union.

In the meantime, and sometime after going with Ryder, Clary had been the first signatory on a petition which a former business agent or assistant business agent was circulating and which sought the investigation by "authorities" of Partin's alleged mishandling of union funds and ill treatment of union members. Sometime after October 4, Clary again spoke to Partin, showing Partin his check for $20 and explaining that his dues were still not being deducted despite the authorization. Partin asked Clary about the petition which Clary had signed, expressed disappointment that Clary had signed, and requested Clary to sign a counterpetition which Union Steward Efferson was circulating in Partin's behalf. Partin also told Clary in the presence of Crow Peele, as-

sistant business agent, that if he would keep his mouth shut, Partin would take care of Clary's union book and Clary could go back to work and need not worry about the matter. Peele testified that he was aware of the animosity and ill feelings between Partin and Clary and knew that it arose because Clary opposed Partin's activities in the Union.

Sometime before Christmas, 1961, Clary's wife, Patricia, was called first by Peele and later by Partin. Partin told her that he was very disappointed about Clary turning against him by signing the petition, that he wanted Clary to withdraw his name, that Clary should come by the union hall and talk with him, that he could pick up his union book and everything would be straightened out, but that if Clary did not withdraw (from the petition), he would never work for a freight line in Baton Rouge again and would probably be hurt.

In January 1962, Partin informed Bert L. Rooker, Ryder's terminal manager, that Clary was not a union member and suggested that Rooker replace him. Rooker in turn informed Clary of the pressure being put upon him to replace Clary with a union member and recommended that Clary see Partin and get his dues straightened out. Rooker also suggested that Clary take along Don Partin, Partin's brother, also a Ryder employee, and allowed Don Partin to accompany Clary to Partin's office. Clary showed Partin his own signed copy of the dues authorization form, and Partin said, "This is what I've been waiting for. I'll fix it up. Don't worry about anything."

Nothing further was done, however, and on June 21, Partin wrote Rooker as follows:

> Please be advised that Calvin Clary has been suspended for months from Local Union No. 5.
>
> Local No. 5 requests that Ryder Truck Lines terminate the service of Calvin Clary, according to our contract with your company immediately.

Rooker acknowledged receipt of that letter on June 25, but questioned its authenticity because it did not appear to bear Partin's personal signature and because it was not sent in the customary mailing manner for communications between them.

Rooker also showed Partin's letter to Clary and recommended that Clary pay the reinstatement fee of $50. Although Clary felt that he did not owe the reinstatement fee, he obtained from his bank a certified check for $50 and sent it to Partin on July 18 by certified mail, return receipt requested. Clary's letter was receipted for on July 25, in Partin's behalf by Earl Jones, an assistant business agent of Local 5. However, the envelope was later returned to Clary, unopened, in a larger envelop, and Clary subsequently removed the check and cashed it himself.

On July 20, Partin wired Ryder as follows:

> THIS IS TO ADVISE YOU THAT WE WISH TO EXERCISE OUR RIGHT UNDER THE CONTRACT WITH YOUR COMPANY AND ASK YOU TO REPLACE CALVIN CLARY

WITH A MEMBER THAT WILL COINCIDE WITH OUR CONTRACT WITH YOU HE HAS BEEN SUSPENDED SINCE JUNE 1961 AS YOU REMEMBER I HAVE ALREADY SENT YOU ONE LETTER DATED JUNE 21 1962 IN REGARDS TO THIS MATTER PLEASE REFER TO THIS LETTER HE DID NOT ATTEMPT TO PAY HIS DUES UNTIL IT BECAME KNOWN THAT WE WERE ASKING HIS TERMINATION. HE STILL HAS NOT OFFERED TO PAY HIS DUES THAT WE KNOW OF.

Rooker delayed compliance with Partin's demand and on July 30, received a further letter from Partin as follows:

This is to advise you for the third time that we wish to exercise our rights under the Contract with your company and ask that you replace Calvin Clary with an employee that will coincide with our Contract with your company.

As we told you before, he has not paid his dues since June, 1961.

We had numerous conversations with you regarding this matter before and each time you said you would talk to Clary, but nothing ever came of it.

On June 21, 1962, we sent you a letter regarding the matter at your request. Again on July 20, 1962 we sent you a telegram.

This all came about after all efforts to get him to pay his dues had failed and he only offered to pay his dues after he thought that he was in jeopardy under the contract for non-payment of dues.

He had knowledge of the entire situation surrounding this matter as he had made remarks several times on the dock concerning the matter.

Rooker called Clary in, informed him of Partin's demand, and told him that Ryder had no alternative except to honor it or else to be faced with a strike. Clary in turn told Rooker of his attempts to obtain reinstatement. During the course of that conference, Rooker placed a call to Partin, who asked to speak to Union Steward Efferson. In that conversation, which Clary overheard (apparently over a conference telephone hookup), Partin told Efferson he had gone as far as he was going and that if Clary punched the timecard the next morning, the Union would strike Ryder at 9 o'clock. Rooker again informed Clary he had no alternative but to discharge him and handed Clary a formal dismissal letter along with his final check.[2]

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[2]Although Rooker testified that on April 4 and April 13, he issued warning letters to Clary concerning two separate "preventable accidents" and that on July 5 he issued a third warning concerning "agitation or controversial conversation" with other employees, there is no indication from the record that those warnings formed any part of the basis for Clary's discharge or of Partin's demand for his discharge.

Other relevant evidence concerned the practices which Partin and the Union followed in handling the collection of arrearages and the reinstatement of delinquent members. Ann Smith, a secretary in the office of Local No. 5 from 1959 to 1961, testified that the customary reinstatement fee at that time was $50, but she gave some four examples of members who had been out of membership for periods from 1 to 2 years and who were reinstated with Partin's approval for a fee of $5 each. One of those was Prentiss Moak, whose membership was terminated during the period from September 1959 to June 1961. Moak, who was assistant business agent of the Local from October 1951, until October 1958, and vice president for some 4 years until 1958 under Partin, testified that during his term in office there were several occasions when members who had been dropped from the Union were reinstated without payment of a reinstatement fee.

Finally, Rooker testified that Clary's name never appeared on any checkoff list which Partin submitted and that though other employees were sometimes shown as in arrears from 1 month up to and including 4 months, no request for discharge was made by Local 5. Indeed, as late as February 8, 1963, Partin wrote Rooker as follows:

> Due and error (sic) in our records, several of your employees did not have their union dues taken out for several months. It has been brought to my attention that most of them have been neither terminated nor laid off during the past three (3) or four (4) months. The men that were left off of the check-off list shall be billed for partial payments on the regular

monthly check-off list until they have caught up.

B. *Concluding findings*

The foregoing evidence plainly established the complaint allegations. Although Clary became delinquent in the payment of his union dues shortly after going with Ryder, he had done all that was required of an employee to insure the payment of his dues by payroll deductions under his signed checkoff authorization (see *Ferro Stamping and Manufacturing Co.*, 93 NLRB 1459, 1461-2, 1506, 1508); and under the practices which his employer and the Union followed, it was the Union's failure to include Clary's name on the monthly checkoff list which alone accounted for the delinquency. But that fact might not alone have negated the possibility of a valid request for Clary's discharge after the termination of his membership if it were truly based on the ground of Clary's failure to pay or to tender his dues.

The evidence shows, however, that such was not the case; that Clary was in fact in disfavor with Partin (*Shear's Pharmacy, Inc.*, 128 NLRB 1417, 1419; Supplemental Decision, 137 NLRB 451, 452-453), because Clary had openly aligned himself with other members of Local 5 in opposition to Partin and to his management of the affairs of the Local; and that Partin repeatedly sought to have Clary withdraw from such opposition, both by promises to straighten out his dues arrearages and by threats made to Clary's wife of blacklisting and other harm to befall Clary, meanwhile refusing to accept Clary's tender of his back dues.

When those efforts failed, Partin began a persistent campaign to cause Ryder to discharge Clary, still refusing to permit Clary's reinstatement despite Clary's tender of a fee which it had not been the Union's practice uniformly to require of delinquent members. Furthermore, even were it assumed that Clary's delinquency had its origin in error, it was the Union's error, and, most significantly, one of the same type as that which Partin acknowledged in his letter of February 8, 1963, to Rooker and which he corrected by directing partial payments on simple arrearages without requiring a reinstatement fee or any other penalty.

Under the foregoing circumstances, and particularly in view of Partin's repeated assurances that he would straighten out the matter of the dues checkoff, it would be grossly inequitable and contrary to the spirit of the Act to permit Partin to lawfully request Clary's discharge. Cf. *Philadelphia Sheraton Corp.*, 136 NLRB 888,896.

The holding in *General Motors Corporation*, 134 NLRB 1107, also supports the conclusions here reached. Initially, it is to be noted that contrary to the situation there, Clary had tendered a full reinstatement fee prior to any operative or lawful request for his discharge.[3]

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[3]The envelope addressed to Partin contained a post office stamp showing that the addressee was given a first notice of the letter on July 19.

But even assuming *arguendo* that Clary's tender were untimely, the question to be determined, as the Board held in *General Motors,* is the reason underlying the discharge. In that case the Board found that the request for discharge was made *solely* because of the dues delinquency of the employee and that there was absent any other evidence of unlawful purpose warranting an inference that the request was for some undisclosed reason other than the delinquency. Concluding that a belated tender after a *lawful* request is insufficient *standing alone* to warrant such an inference, the Board stated that in all such cases it will look to the record to determine *the real reason* for the parties' subsequent conduct.

The present record contained the evidence of unlawful purpose which was absent from *General Motors,* i.e., that Partin caused Ryder to discharge Clary because Clary was aligned with members of the Union who opposed Partin. I conclude and find that that was the real reason for Partin's conduct and that it was unrelated to the fact of Clary's dues delinquencies. I therefore conclude and find that Partin, by attempting to cause on July 20 and July 30,[4] and by causing Ryder on July 30, to discharge Clary for the aforesaid reason, engaged in unfair labor practices proscribed by Section 8(b)(2) and (1)(A) of the Act.

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[4]I make no finding concerning an earlier attempt to cause on June 21, as alleged in the complaint, for that date was outside the limitation period provided in Section 10(b).

Upon the basis of the foregoing findings of fact and upon the entire record in the case I make the following:

Conclusions of Law

1. Ryder Truck Lines, Inc., the employer herein, is engaged in commerce within the meaning of Section 2(6) of the Act.

2. Respondent Edward G. Partin is business agent of General Truck Drivers, Chauffeurs, Warehousemen & Helpers of America, Local No. 5, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Ind., which local is a labor organization within the meaning of Section 2(5) of the Act.

3. By causing and attempting to cause Ryder to discharge Calvin C. Clary, whose membership had been terminated on a ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in Local No. 5, Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that he

cease and desist therefrom and that he take certain affirmative action which is conventionally ordered in such cases, as provided in the Recommended Order below, which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act.

Upon the foregoing findings of fact and conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

RECOMMENDED ORDER

Edward G. Partin, Business Agent, General Truck Drivers, Chauffeurs, Warehousemen & Helpers of America, Local No. 5, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Ind., his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Ryder Truck Lines, Inc., to discriminate against employees in violation of Section 8(a)(3) of the Act, or to discriminate against any employee with respect to whom membership in Local No. 5, has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

(b) In any like or related manner restraining or coercing employees of Ryder Truck Lines, Inc., in the exercise of rights guaranteed in Section 7 of the Act, except to the extent that such right may be af-

fected by an agreement requiring membership in a labor organization as a condition of employment in accordance with Section 8(a) (3) of the Act.

2. Take the following affirmative action:

(a) Notify Ryder Truck Lines, Inc., in writing that he has no objection to the reinstatement of Calvin C. Clary.

(b) Make whole Calvin C. Clary for any loss of pay which he may have suffered by payment to him of a sum of money equal to that which he would normally have earned from July 30, 1962, to the date of Respondent's notice to the Ryder Truck Lines, Inc., as provided in the foregoing paragraph, less his net earnings during said period (*Crossett Lumber Company*, 8 NLRB 240, said backpay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, together with interest thereon at the rate of 6 percent per annum. *Isis Plumbing & Heating Co.*, 138 NLRB 716.

(c) Post in his office in Baton Rouge, Louisiana, and at all other places where he customarily posts notices to members of Local No. 5, copies of the notice attached hereto marked Appendix A.[5] Copies of said

[5]In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of a Unit-

notice to be furnished by the Regional Director for the Fifteenth Region shall, after being duly signed by Respondent, be posted immediately upon receipt thereof and maintained by him for 60 consecutive days thereafter in conspicuous places, including all places where he customarily post notices to members of Local No. 5. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Deliver to the Regional Director for the Fifteenth Region signed copies of said notice in sufficient number to be posted by Ryder Truck Lines, Inc., the Company being willing.

(e) Notify the Regional Director for the Fifteenth Region in writing within 20 days from the date of the receipt of this Decision what steps Respondent has taken to comply herewith.[6]

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ed States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[6]In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

Dated at Washington, D. C.

April 30, 1964

(Signed) GEO. A. DOWNING
George A. Downing
Trial Examiner

APPENDIX A

NOTICE TO ALL MEMBERS OF GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL NO. 5, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, IND. PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, I hereby notify you that:

I WILL NOT cause or attempt to cause RYDER TRUCK LINES, INC., to discriminate against any employee in violation of Section 8(a) (3) of the National Labor Relations Act as amended or to discriminate against any employee with respect to whom membership in Local No. 5 has been denied or terminated on some ground other than his failure to tender

the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

I WILL NOT in any like or related manner restrain or coerce employees of RYDER TRUCK LINES, INC., in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment in accordance with Section 8(a)(3) of the Act.

I WILL make whole Calvin C. Clary for any loss of pay he may have suffered by reason of the discrimination against him.

_____

Edward G. Partin,
Business Agent,
General Truck Drivers,
Chauffeurs, Warehousemen &
Helpers of America,
Local No. 5, Affiliated with
International Brotherhood of
Teamsters, Chauffeurs, Warehousemen &
Helpers of America, Ind.

Dated_____

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, T6024 Federal Building (Loyola), 701 Loyola, New Orleans, Louisiana 70113 (Tel. No. 529-2411 Ext. 6396), if they have any question concerning this notice or compliance with its provisions.

APPENDIX B

April 1, 1964
Re: Edward G. Partin, et al
Case No. 15-CB-622

William C. Bradley, Esq.
3010 Ray Weiland Drive
Baker, Louisiana

Dear Mr. Bradley:

At the convening of this hearing on March 17, 1964, at Baton Rouge, Louisiana, you appeared for the Respondent, Edward G. Partin, represented to the Trial Examiner that you had just been retained as Counsel for Mr. Partin, and asked for and was granted a continuance in order to have more time to prepare your defense. The stenographic transcript of hearing of March 17 reflects your statement that you would be prepared upon reconvening to go forward with the matter, whether Mr. Partin was present or not. (Tr. p. 14).

You did not appear when the case was reconvened on March 25 after another trip by the Trial Examiner from Washington, D. C., to Baton Rouge; nor did your

client or anyone else on his behalf. No explanation was offered for your non-appearance; no notification was given to the prosecutor or the Trial Examiner of your withdrawal from the case, or of your client's intention not to appear.

In the circumstances it is felt that an explanation is in order.

Very truly yours,

George Bokat
Chief Trial Examiner

cc: David L. McComb, Esq.
T-6024, Federal Building
701 Loyola Avenue
New Orleans, Louisiana

Roy Maughan and J. H. Bankston, Esqs.
Maughan and Bankston
4539 Plank Road
Baton Rouge, Louisiana

APPENDIX C

WILLIAM C. BRADLEY
Attorney at Law
3010 Ray Weiland Drive
Baker, Louisiana

April 25, 1964

AIR MAIL

Honorable George Bokat, Chief Trial Examiner
National Labor Relations Board
Washington 25, D. C.

Re: Edward G. Partin, et al
Case No. 15-CB-622

Dear Mr. Bokat:

I desire to reply to your recent favor concerning the above captioned, and further to request an opportunity for my client, Edward G. Partin, Business Agent General Truck Drivers, Chauffeurs, Warehousemen & Helpers of America, Local No. 5, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Ind., to be given an opportunity to present evidence and further to extend the time accordingly in which we might present our briefs in this matter.

When this case was re-convened on March 24, 1964, I did not appear and did not present any evidence nor give any explanation for this non-appearance at that time, nor ask for a continuance for the reason that on the morning of the re-convened hearing, March 24,

1964, a message was left at my office that this hearing had been cancelled and passed without date and would be re-scheduled. I had no reason to doubt the veracity of this message, and accordingly, I did not appear.

As you are aware, the hearing was held with the complainant, Calvin C. Clary, presenting testimony through his witnesses. I did not have an opportunity to cross-examine any of these witnesses. Although I appreciate it to be impossible for these witnesses to be recalled in order that I might cross- examine them, I consider it only fair that we be permitted to at least be given an opportunity to adduce testimony of our own in support of our position.

I will appreciate your good offices in allowing this matter to be continued so as to permit us to present our evidence, and further to be continued a reasonable time thereafter in order that we might submit a brief covering our position.

With all best wishes, I am

Yours very truly,

/s/ WILLIAM C. BRADLEY
William C. Bradley
WCB:jfd

cc: David L. McComb, Esq.
T-6024, Federal Building
701 Loyola Avenue
New Orleans, Louisiana

Roy Maughan and J. H. Bankston, Esqs.
Maughan and Bankston
4539 Plank Road
Baton Rouge, Louisiana

Mr. Edward G. Partin
Business Agent
Teamsters Local Union No. 5
1675 Airways Drive
Baton Rouge, Louisiana

148 NLRB No. 88 D-6400 Baton Rouge, La.

DECISION AND ORDER

United States of America
Before the National Labor Relations Board

Edward G. Partin, Business Agent, General Truck Drivers, Chauffeurs, Warehousemen & Helpers of America, Local No. 5, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Ind.

and Case No. 15-CB-622

Calvin C. Clary

On April 30, 1964, Trial Examiner George A. Downing issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that he cease and desist therefrom and take certain affirmative action, as set forth in the Trial Examiner's Decision attached hereto. Thereafter, the Respondent filed exceptions to portions of the Trial Examiner's Decision, and the General Counsel filed a brief in answer thereto.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Ex-

aminer made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the General Counsel's brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner, and orders that Respondent shall take the action set forth in the Trial Examiner's Recommended Order,[1] with the following additions:

Add the following sentence to Paragraph 2(a) of the Trial Examiner's Recommended Order:

"Notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces."

---

[1] In the absence of exceptions thereto, the Board adopts the Trial Examiner's recommendation that Respondent make Calvin C. Clary whole for any loss suffered as a result of Respondent's violations of the Act.

The following is added as the third indented paragraph in Appendix A attached to the Trial Examiner's Decision:

> I WILL notify Ryder Truck Lines that I have no objection to the reinstatement of Calvin C. Clary.

Add the following immediately above the double line in Appendix A:

> I WILL notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

Dated, Washington, D. C.
Sept. 4, 1964

_____
Frank W. McCulloch,
Chairman

_____
Boyd Leedom, Member

_____
John H. Fanning, Member
NATIONAL LABOR
RELATIONS BOARD

(SEAL)

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 21970

EDWARD G. PARTIN, Business Agent, General Truck Drivers, Chauffeurs, Warehousemen & Helpers of America, Local No. 5, etc., ET AL.,

Petitioners,

versus

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Petition for Review of an Order of the National Labor Relations Board, Sitting at Washington, D. C.

(February 10, 1966.)

Before GEWIN and COLEMAN, Circuit Judges, and McRAE, District Judge.

PER CURIAM: The petitioner seeks to review and set aside an order of the Board which found that he violated § 8(b)(2) and (1)(a) of the National Labor Relations Act, 29 U.S.C.A. § 151 et seq., acting as agent for the Teamsters Union, Local No. 5, by causing Ryder Truck Lines to dis-

charge Calvin C. Clary because Clary had participated in activity opposing petitioner's handling of union funds and affairs. The Board requests enforcement of its order. Its decision and order are reported at 148 NLRB No. 88.

In addition, petitioner Partin has filed a motion for leave to adduce additional evidence because neither petitioner nor his counsel were present when the matter was heard before the Trial Examiner. Petitioner's counsel claims that he was advised by someone not connected with the case that the scheduled hearing had been postponed; therefore, he did not attend. When the docket was called in this Court, counsel for petitioner was not present. This Court delayed hearing the case for a reasonable time after court opened to allow additional time for petitioner's counsel to appear. He had not appeared when court recessed on this day. We deem it unnecessary to make a detailed factual statement with respect to the motion except to say that neither the petitioner nor his counsel appear to regard seriously the matter of responding to dockets or scheduled hearings. In addition to other reasons for denying the motion, the petitioner has not shown that the evidence he seeks to adduce is material or that there were reasonable grounds for his failure to adduce such evidence before the Board. The motion is DENIED.

There was ample evidence on the record as a whole to support the Board's finding and the Board properly denied petitioner's request to reopen the hearing. The petition for review is DENIED and the Board's order is ENFORCED.

Adm. Office, U. S. Courts—E. S. Upton Printing Co., N. O., La.

CERTIFICATE

We, Teddy W. Airhart, Jr., and William C. Bradley, attorneys for petitioner, Edward G. Partin, certify that a copy of the above and foregoing Petition for a writ of Certiorari has this date been served upon David L. McComb, Esq. for the General Counsel, and Roy Maughan and J. H. Bankston, Esqs., Baton Rouge, Louisiana, attorneys for Respondent, by mail addressed to each respective, postage prepaid.

Baton Rouge, Louisiana, this, the 13th day of June, 1966.

TEDDY W. AIRHART, JR.

WILLIAM C. BRADLEY

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 268

EDWARD G. PARTIN, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 35–36) is reported at 356 F. 2d 512. The Board's Decision and Order (Pet. App. 8–24, 32–34) are reported at 148 NLRB 819.

JURISDICTION

The opinion of the court of appeals was issued on February 10, 1966 (Pet. App. 35). A petition for rehearing was denied on March 21, 1966, and the decree was entered on March 29, 1966. The petition for a writ of certiorari was filed on June 20, 1966.

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The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in the circumstances of this case, petitioner's requests to reopen the hearing and to adduce additional evidence before the Board were properly denied.

STATUTE INVOLVED

The relevant provision of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), in addition to those set forth in the petition (p. 6), is as follows:

> Section 10(e).
>
> * * * If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. * * *

STATEMENT

The Board found that petitioner Partin, Business Agent of Local 5 of the Teamsters, had violated Section 8(b)(2) and (1)(A) of the National Labor Relations Act[1] by causing Ryder Trucking Company

[1] Section 8(b)(2) makes it an unfair labor practice for a labor organization or its agents "to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uni-

to discharge employee Calvin C. Clary because he sought to instigate an investigation of petitioner's alleged mishandling of Union funds (Pet. App. 18–21, 32–33). The Board ordered Partin to cease and desist from the unfair labor practices found, to notify the Company that he has no objection to the reinstatement of Clary, and to reimburse Clary for any loss of pay resulting from the unlawful discharge (Pet. App. 22–24, 33–34). The petition challenges the action of the Board and the court of appeals in refusing to reopen the proceeding in order to permit Partin and his counsel, who were not present at the Board hearing, to adduce evidence. The facts respecting this issue are as follows:

The complaint, based on a charge filed by Clary, issued on August 16, 1963, and set the hearing for September 16, 1963. On motions by the parties, including Partin, the hearing was several times rescheduled and ultimately opened on March 17, 1964, in Baton Rouge, Louisiana, before a Board Trial Examiner (R. 11–42; B.A. 1).[2] Attorney William C. Bradley appeared as counsel of record for Partin, and requested a continuance on the grounds that he had been retained as counsel only one day before and

formly required as a condition of acquiring or retaining membership." Section 8(b)(1)(A) makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce * * * employees" in the exercise of the right "to form, join, or assist labor organizations" or to refrain from such activities.

[2] References to the pleadings and other formal documents comprising the "Transcript of Record" in the court below are designated "R." References to the portions of the testimony printed as an appendix to the Board's brief are designated "B.A."

that Partin and all of the Union officials were in Chattanooga, Tennessee (Pet. App. 8–9, n. 1; B.A. 4–6). Bradley stated that "if Mr. Partin is here in a week or 10 days or not I will be prepared to go forward with the matter * * *" (B.A. 6). Over the objections of the General Counsel and counsel for Clary, the charging party, the Trial Examiner granted Bradley's motion (B.A. 5–7). The hearing was continued until Wednesday, March 25, at 10 a.m. (Pet. App. 8; B.A. 7).

On March 25, when the hearing was resumed, neither Attorney Bradley nor Partin appeared (Pet. App. 8, n. 1; B.A. 9–10). Evidence was taken and the hearing was closed at 1:40 p.m. (B.A. 51). On April 1, 1964, George Bokat, the Board's Chief Trial Examiner, wrote Bradley from Washington, D.C., requesting an explanation of his failure to appear for the hearing on March 25 (Pet. App. 8–9, n. 1, 27–28). Over 3 weeks later, on April 25, Bradley replied that on the morning of the reconvened hearing[3] "a message was left at my office stating that the hearing had been cancelled * * *" (Pet. App. 29–30). Without identifying the source of the message, Bradley wrote that because he had "no reason to doubt the veracity of this message" he did not appear at the hearing. Bradley's letter requested a further continuance in order to present evidence (Pet. App. 30).

The Chief Trial Examiner referred Bradley's letter to the Trial Examiner, whose decision was then in

[3] Bradley's letter erroneously refers to the date of the reconvened hearing as March 24 (Pet. App. 29).

the process of final preparation. The Trial Examiner ruled that Bradley's letter did not provide an adequate basis for reopening the hearing (Pet. App. 8–9, n. 1). The Board affirmed the Trial Examiner's ruling (Pet. App. 32–33).

Petitioner sought review of the Board's order in the court of appeals, and filed a motion requesting that the case be remanded to the Board so that he could adduce additional evidence. In addition to the reasons for reopening the hearing previously advanced before the Board, the motion showed, for the first time, that the erroneous information that the Board hearing had been postponed had been furnished to petitioner by Mr. Walter J. Sheridan, an employee of the Department of Justice. Copies of the motion, the affidavits and the Board's response are set forth in the Appendix, *infra,* pp. 9–26. The court of appeals held that the Board had properly denied petitioner's request to reopen the hearing, and that no sufficient basis was presented for granting the motion to adduce additional evidence. The court also noted that (Pet. App. 2), "[w]hen the docket was called in this Court, counsel for petitioner was not present. This Court delayed hearing the case for a reasonable time after court opened to allow additional time for petitioner's counsel to appear. He had not appeared when court recessed on this day. * * * [N]either the petitioner nor his counsel appear to regard seriously the matter of responding to dockets or scheduled hearings." The court went on to find that the Board's unfair labor practice findings were amply supported by the

evidence, and it enforced the Board's order (Pet. App. 2).

ARGUMENT

Both the reopening of a hearing and the granting of a motion to adduce additional evidence are discretionary matters;[4] we believe such discretion was reasonably exercised here. Petitioner's counsel delayed more than three weeks in responding to the Chief Trial Examiner's inquiry as to why he failed to appear at the March 25 hearing, and his eventual response neither indicated who had informed him that the hearing had been cancelled nor the nature of the evidence which he would introduce. The Trial Examiner was therefore fully warranted in declining to reopen the hearing. In the court of appeals, petitioner showed a reasonable basis for believing that the March 25 hearing had been cancelled, but he wholly failed to indicate the nature of the additional evidence sought to be adduced as "material" and, indeed, even failed to appear at the oral argument of the case. The court of appeals, we submit, likewise did not exceed the permissible limits of its discretion in declining to grant petitioner's motion to adduce additional evidence in these circumstances. See *National Labor Relations Board* v. *May Department Stores Co.*, 154 F. 2d 533, 540 (C.A. 8), certiorari denied, 329 U.S. 725.

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[4] See *National Labor Relations Board* v. *Mexia Textile Mills, Inc.*, 339 U.S. 563, 569; *National Labor Relations Board* v. *Eastern Massachusetts Street Railway Co.*, 235 F. 2d 700, 710 (C.A. 1), certiorari denied, 352 U.S. 951.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

ROBERT A. GIANNASI,
Attorney,
National Labor Relations Board.

JULY 1966.

APPENDIX

In the United States Court of Appeals for the Fifth Circuit

No. 21,970

EDWARD G. PARTIN, BUSINESS AGENT, GENERAL TRUCKDRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL NO. 5, ETC., ET AL, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

JURISDICTIONAL STATEMENT

This case is before the Court on a motion for leave to adduce additional evidence in a hearing before the National Labor Relations Board. The Court has jurisdiction under 29 U.S.C.A. 160(e) (hereinafter referred to as "the act").

PRELIMINARY STATEMENT

This matter comes before the Court upon petition by Edward G. Partin, Business Agent, General Truckdrivers, Chauffeurs, Warehousemen & Helpers of America, Local No. 5, Etc., Et Al, to review and set aside an order of the National Labor Relations Board seeking to compel petitioner to:

1. Cease and desist from:

(a) Causing or attempting to cause Ryder Truck Lines, Inc., to discriminate against employees in violation of Section 8(a)(3) of the Act, or to discriminate against any employee with respect to whom membership in Local No. 5, has been denied or terminated

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on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

(b) In any like or related manner restraining or coercing employes of Ryder Truck Lines, Inc., in the exercise of rights guaranteed in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment in accordance with Section 8(A)(3) of the Act.

2. Take the following affirmative action:

(a) Notify Ryder Truck Lines, Inc., in writing that he has no objection to the reinstatement of Calvin C. Clary.

(b) Make whole Calvin C. Clary for any loss of pay which he may have suffered by payment to him of a sum of money equal to that which he would normally have earned from July 30, 1962, to the date of petitioner notice to the Ryder Truck Lines, Inc., as provided in the foregoing paragraph, less his net earnings during said period (*Crossett Lumber Company,* 8 NLRB, 240, said backpay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company,* 90 NLRB 289, together with interest thereon at the rate of 6 per cent per annum. *Isis Plumbing & Heating Co.,* 138 NLRB 716.

(c) Post in his office in Baton Rouge, Louisiana, and at all other places where he customarily posts notices to members of Local No. 5, copies of the notice attached hereto marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Fifteenth Region shall, after being duly signed by Respondent, be posted immediately upon receipt thereof and maintained by him for 60 consecutive

days thereafter in conspicuous places, including all places where he customarily post notices to members of Local No. 5. Reasonable steps shall be taken by petitioner to insure that said notices are not altered, defacted, or covered by any other material.

(d) Deliver to the Regional Director for the Fifteenth Region signed copies of said notice in sufficient number to be posted by Ryder Truck Lines, Inc., the Company being willing.

(e) Notify the Regional Director for the Fifteenth Region in writing within twenty (20) days from the date of the receipt of this Decision what steps petitioner has taken to comply therewith.

STATEMENT OF THE CASE

Calvin C. Clary alleges that petitioner herein, Edward G. Partin, Business Agent, General Truckdrivers, Chauffers, Warehousemen & Helpers of America, has engaged in unfair labor practice affecting commerce as set forth and defined in National Labor Relations Act as amended 29 U.S.C. 151, et seq. Prior to June 15, 1962, General Truckdrivers, Chauffeurs, Warehousemen & Helpers of America entered into a collective bargaining agreement with Ryder Truck Lines, Inc., which said agreement contained inter alia, a union security clause as follows:

> "Article 88, Section 1(b). All present employees who are the Local Union on the effective date of this subsection shall remain members of the Local Union in good standing as a condition of employment. All present employees who are not members of the Local Union and all employees who are hired hereafter shall become and remain members in good standing of the Local Union as a condition of employment on and after the 31st day following the beginning of their employment or on and after the 31st day of following the effective date of

this subsection, whichever is the later. This provision shall be made, and become effective as of such time as it may be made and become effective under the provisions of the National Labor Relations Act, but not retroactively."

Calvin C. Clary further alleges that petitioner herein, Edward G. Partin, has been and is still discriminating against him by denying his membership in the union and thereby forcing a loss of employment of the said Clary with Ryder Truck Lines, Inc.

On the date of the original hearing before the Trial Examiner held March 25, 1964, petitioner's counsel was advised by telephone that the hearing had been canceled and passed without date and would be rescheduled. (See Appendix "C" to printed record). In addition the said proceedings before the Trial Examiner, held March 25, 1964, convened in the State Capitol Building, Baton Rouge, Louisiana, and without prior notice to the parties or their counsel, adjourned the hearing to Room 327 in the main Post Office Building at 709 Florida Street, Baton Rouge, Louisiana. Upon neither the petitioner, Edward G. Partin, or his counsel appearing at this said hearing and without making any inquiry whatsoever to determine the cause of their absences, the Trial Examiner proceeded to hear testimony.

STATUTE INVOLVED

Title 29 U.S.C.A. Section 160(e) as follows:

"If either party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, it's member, agent, or agency, the Court may order such additional evidence to be taken before the Board, it's member, agent, or agency,

and to be made a part of the record. The Board may modify it's findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file it's recommendations, if any, for the modification or setting aside of it's original order.

ARGUMENT

A motion for leave to adduce additional evidence is the proper remedy for petitioner who has been unjustifiably deprived of his fundamental right to present his evidence before the Trial Examiner. On the morning of the hearing before the Trial Examiner, a message was left at the office of the petitioner's counsel stating that the hearing had been cancelled and would be re-scheduled. Since counsel had no reason to doubt the veracity of the message, he did not appear. (See letter from Mr. Bradley to Mr. Bokat, Appendix C of the Decision).

Under 29 U.S.C.A. Section 160(e) it is indicated that the Court will order additional evidence to be taken when it is shown that such evidence is material and that there were reasonable grounds for failing to adduce such evidence in the hearing. In the instant case, it is clearly evident that petitioner, through no fault of his own, has not even been afforded an opportunity to present his case.

The application of this statute is shown in the case of *Mississippi Valley Structural Co.* v. *N.L.R.B.*, 145 F. 2d 664 (1944). In that case, petitioner was required to withdraw from the hearing because one of petitioner's counsel was out of state because of bad health. The hearing was held before the Trial Examiner and it found against petitioner. The Circuit

Court of Appeals, 8th Circuit, in holding for petitioner, stated:

> "We think that under the circumstances of this case, this Court is justified in treating the petition for review as including an application by petition for leave to adduce additional evidence. This Court has discretion to see that before a party's rights are finally foreclosed his case has been fairly heard. We are satisfied that petitioner can produce evidence which is relevant and material and which was not before the Board, and that there were reasonable grounds for the failure of petitioner to adduce it at the hearing before the Trial Examiner."

The Courts are given discretion to see that before a party's rights are finally foreclosed his case has been fairly heard. As properly indicated by *N.L.R.B.* v. *Indiana and Michigan Electric Co.*, 318 U.S. 9, "Findings cannot be said to have been fairly reached unless material evidence might impeach as well as that which will support its findings, is heard and weighed."

Although petitioner herein has been denied the opportunity to cross-examine the charging party's witnesses, petitioner is willing to forego this if he is given an opportunity to present his own witnesses and evidence.

Petitioner's reliance on the telephone message that the hearing was cancelled and would be re-scheduled later, should be interpreted as "reasonable grounds for failure to adduce evidence at the hearing". See *Southport Petroleum Co.* v. *N.L.R.B.*, 62 S. Ct. 452, (1942).

In *N.L.R.B.* v. *Ideal Laundry and Dry Cleaning Co.*, 330 F. 2d 712, (1964), a post-election investigation was conducted without Respondent having any notice of it, and it was upon this investigation that

the Board based its decision. The Circuit Court, in refusing to uphold the Board's order stated:

> "Due process demands that either party be permitted to produce additional proof deemed material to the vital issue of appropriateness, if it was not a part of the record in the representative proceedings and for some reason was unavailable for consideration by the Board in its decision."

Upon a Trial Examiner's refusal to hear testimony from two of plaintiff's witnesses the U.S. Supreme Court in *Consolidated Edison Company* v. *N.L.R.B.*, 59 S. Ct. 206 has stated that this refusal was an abuse of discretion and plaintiff should have moved for leave to adduce additional evidence, which could have been granted on a showing of reasonable grounds. This case also indicates that if petitioner had not been notified of the hearing, the proceeding would be void. In the instant case, petitioner has been as fully deprived of his basic right to present his case as if he had not received notice of the hearing. It should be emphasized again that petitioner had no reason whatsoever to question the message left at the office.

CONCLUSION

For the reasons stated, it is respectfully submitted that petitioner's Motion for Leave to Adduce Additional Evidence be granted.

Respectfully submitted,

William C. Bradley,
WILLIAM C. BRADLEY,
Attorney for Petitioner.

CERTIFICATE

I, William C. Bradley, Attorney for Petitioner, Edward G. Partin, do hereby certify that a copy of the above and foregoing has this date been served upon

David L. McComb, Esq., for the General Counsel, and Roy Maughan and J. H. Bankston, Esq., Baton Rouge, Louisiana, for the charging party by mail addressed to each respectively, postage prepaid.

Baker, Louisiana, this, the 14th day of December, 1965.

William C. Bradley,
WILLIAM C. BRADLEY.

In the United States Court of Appeals for the Fifth Circuit

Case No. 21,970

EDWARD G. PARTIN, BUSINESS AGENT, GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA LOCAL NO. 5, ETC., ET AL, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

STATE OF LOUISIANA,
Parish of East Baton Rouge

Before me, the undersigned authority, a Notary Public duly commissioned and qualified within and for the Parish of East Baton Rouge, State of Louisiana, and therein residing, personally came and appeared: Joyce Ford Denham, a resident of lawful age of the Parish of East Baton Rouge, State of Louisiana, who, after being by me first duly sworn did depose and say:

That prior, on, and after March 24, 1964, your affiant was employed by William C. Bradley, Attorney at Law, as a legal secretary and that the said William

C. Bradley maintained his law office at 3010 Ray Weiland Drive, Baker, Parish of East Baton Rouge, State of Louisiana, with office telephone number, 775-5525.

That on and prior to the aforesaid date the said William C. Bradley represented and was the attorney of record for Edward G. Partin in the above entitled and numbered cause which was then pending for hearing before the Trial Examiner of the National Labor Relations Board, said hearing being fixed for March 24, 1964, at 10:00 o'clock, a.m.

That on the aforesaid date of March 24, 1964, at approximately 9:10 o'clock a.m., and shortly before the said William C. Bradley arrived at his said law office, there was received at the said law office a telephone call from a gentleman who identified himself as Mr. Walter Sheridan.

Since Mr. Bradley had not then arrived at his said law office, your affiant then and there received the telephone message on the aforesaid time and date from the aforesaid Mr. Walter Sheridan, advising that the aforesaid hearing fixed that morning at 10:00 o'clock a.m., as aforesaid, had been cancelled and that the same would be re-assigned through further notice.

Mr. William C. Bradley arrived at his said law office at the aforesaid date at approximately 9:20 o'clock a.m., and your affiant informed Mr. Bradley of the telephone call having been received that morning from Mr. Walter Sheridan and it's contents regarding the cancellation of the aforesaid hearing. In reliance thereupon Mr. Bradley did not attend the said hearing, but remained at his office the balance of the aforesaid morning.

Joyce Ford Denham

JOYCE FORD DENHAM.

Sworn to and subscribed before me, Notary, on this, the 14th day of December, 1965.

William C. Bradley,

WILLIAM C. BRADLEY, *Notary Public.*

In the United States Court of Appeals for the Fifth Circuit

No. 21970

EDWARD G. PARTIN, BUSINESS AGENT, GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL NO. 5, ETC., ET AL, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

STATE OF LOUISIANA
Parish of East Baton Rouge

Before me, the undersigned authority, a Notary Public, duly commissioned and qualified within and for the Parish of East Baton Rouge, State of Louisiana, and therein residing, personally came and appeared: William C. Bradley, a resident of lawful age of the Parish of East Baton Rouge, State of Louisiana, who, after being by me first duly sworn, did depose and say:

That he is an attorney-at-law, duly licensed to practice law in the State of Louisiana, and was so engaged in said practice on or after March 24, 1964, and there and then maintained his law office at 3010 Ray Weiland Drive, Baker, Parish of East Baton Rouge, State of Louisiana, with office telephone number, 775–5525.

That on or prior to the aforesaid date, your affiant was the attorney-of-record for Edward G. Partin, in the above entitled and numbered cause, which was

then pending for hearing before the Trial Examiner of the National Labor Relations Board and the continued hearing of the complaint here in question had been fixed for the said date of March 24, 1964, at 10:00 o'clock, A.M.

That shortly prior to your said affiant's arrival at his said law office on March 24, 1964, there was received in your said affiant's said law office at the aforesaid location, a telephone call, being there and then received by your affiant's secretary and receptionist, Mrs. Joyce F. Denham. The said telephone call was received at approximately 9:10 o'clock A.M., on the said morning and your affiant had not then arrived at his said office. Upon arriving at his said office on the aforesaid date at approximately 9:20 o'clock a.m., your affiant was informed by his said secretary and receptionist of the said telephone call from a Mr. Walter Sheridan, who, your affiant knew to be an employee of the U.S. Department of Justice and who your affiant further knew to be there and then employed in connection with the trial proceedings in Chattanooga, Tennessee, in which James Hoffa was a defendant and where your said affiant's client, Edward G. Partin, the above styled petitioner, was a very material witness, advising that the hearing before the Trial Examiner of the complaint here in question fixed for 10:00 o'clock had been postponed and that the same would be re-assigned by further written notification to your affiant.

Your affiant had no reasonable reason to doubt the veracity of said telephone conversation advising that the said hearing had been postponed and likewise since your affiant's office is located at Baker, Louisiana, at a point approximately ten (10) miles distant from the site fixed for said hearing and further since there were no means by which your affiant could telephone the committee room in the State Capitol to

verify the fact that the hearing had been postponed, your affiant did not appear on behalf of his client, Edward G. Partin, to cross-examine the witnesses presented by the respondent or to otherwise participate in the said hearing. In addition, any inquiry by your affiant at the place fixed for the said hearing, that is Committee Room Number Three (3), State Capitol Building, would have been without avail by virtue of the fact that without prior notice and at approximately 10:00 o'clock a.m., the Trial Examiner removed the said hearing to the District Courtroom of the United States Post Office Building, Baton Rouge, Louisiana, which is approximately one (1) mile distant from the place of the original hearing.

No inquiry was made of your affiant or to your affiant's office on the said date by the Trial Examiner or opposing counsel to reasonably determine the reason for your affiant's absence at the removed hearing by the Trial Examiner.

It was not until on or about April 3, 1964, when your affiant received a letter dated April 1, 1964, from George Bokat, Chief Trial Examiner, advising that the hearing had in fact been held and asking your affiant for an explanation for his non-appearance at the hearing and regarding the non-appearance of his client, the said, Edward G. Partin.

Your affiant further shows that through no fault of his own or that of his client, Edward G. Partin, that the said Edward G. Partin was deprived of a reasonable opportunity to testify and that your affiant was deprived on the part of the said, Edward G. Partin to present evidence and to cross-examine the witnesses of the respondent at the original hearing held before the Trial Examiner, as aforesaid.

WILLIAM C. BRADLEY.

Sworn to and subscribed before me, Notary, on this, the 14th day of December, 1965.

ANDREW J. BRUMETT, JR.,
Notary Public.

AFFIDAVIT

Walter J. Sheridan, being first duly sworn, upon oath, states as follows:

1. That from January 23, 1961, to August 28, 1964, he was employed by the United States Department of Justice as a Special Consultant to the Attorney General.

2. That in his official capacity as an employee of the United States Department of Justice, he became acquainted with Edward Grady Partin, then and now Secretary-Treasurer and Business Agent of Local Union No. 5, International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America, located at Baton Rouge, Lousiana.

3. That during the month of March 1964, Edward Grady Partin inquired of him whether a hearing scheduled to be held by a trial examiner of the National Labor Relations Board, which hearing involved certain unfair labor practice charges by one Calvin C. Clarey, against Partin, was to be held in Baton Rouge, Louisiana, on or about March 24, 1964.

4. That he telephoned the Chief Counsel of the National Labor Relations Board who informed him that the matter "had already been postponed." He interpreted this to mean a postponement of the hearing then scheduled for March 24, 1964. (Actually, the Chief Counsel meant—as he later learned—that previously there had been a postponement and thus a further postponement was unwarranted.)

5. That he informed Edward Grady Partin he had learned that the said hearing had been postponed.

6. That Edward Grady Partin then requested him to call Partin's attorney, William C. Bradley of Baker, Louisiana, and inform Bradley the said hearing had been postponed.

7. That he called the offices of William C. Bradley at Baker, Louisiana, on or about March 24, 1964, and asked to speak with Mr. Bradley. A secretary answered the telephone and stated that Mr. Bradley was not in his office at the time. He then told the secretary to inform Mr. Bradley that the said hearing had been postponed.

Walter J. Sheridan,
WALTER J. SHERIDAN.

Sworn and subscribed to this 20th day of October 1965.

HELEN A. WISHER,
Notary Public.

My Commission Expires October 31, 1968.

In the United States Court of Appeals for the Fifth Circuit

No. 21970

EDWARD G. PARTIN, BUSINESS AGENT, GENERAL TRUCKDRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL NO. 5, ET AL., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

Petitioner has moved the Court for leave to adduce additional evidence under Section 10(e) of the Act which provides, in relevant part, that a motion for leave to adduce additional evidence "shall show to the

satisfaction of the Court that such evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board * * *" Thus, petitioner bears the dual burden of showing: (1) that the evidence he seeks to adduce is material, and (2) that there were reasonable grounds for his failure to adduce such evidence before the Board. For the following reasons we submit that petitioner has made no such showing, and that petitioner's motion should therefore be denied:

1. As set forth more fully in the Board's brief (pp. 7–8) the complaint in the instant case issued against petitioner on August 16, 1963, and set the hearing for September 16, 1963. However, on motions by the parties, including petitioner, the hearing was several times rescheduled and ultimately opened on March 17, 1964, in Baton Rouge, Louisiana, before a Board trial examiner. Petitioner's counsel, William C. Bradley, appeared at the hearing and requested a continuance on the grounds that he had been retained as counsel only 1 day before and that petitioner and all of the Union officials were in Chattanooga, Tennessee. Bradley stated that "if Mr. Partin [petitioner] is here in a week or 10 days or not I will be prepared to go forward with the matter * * *" The Trial Examiner granted Bradley's motion and continued the hearing until Wednesday March 25, 1964, at 10 a.m.[1] On March 25, when the hearing was resumed, neither Attorney Bradley nor petitioner appeared. Evidence was taken and the hearing closed at 1:40 p.m. On April 1, 1964, George Bokat, the Board's Chief Trial Examiner, wrote Bradley from Washington, D.C., requesting an explanation of his

[1] Petitioner inadvertently states that the hearing was rescheduled for March 24.

failure to appear for the hearing. Over 3 weeks later, on April 25, Bradley replied that on the morning of the reconvened hearing "a message was left at my office stating that the hearing had been cancelled * * *" Without identifying the source of the message, Bradley wrote that because he had "no reason to doubt the veracity of this message" he did not appear at the hearing. Bradley's letter requested that the hearing be reopened, and that a further continuance be granted, for the purpose of presenting evidence. The letter set forth no specific evidence which petitioner wished to introduce. The Chief Trial Examiner submitted the letter to the Trial Examiner, who ruled that petitioner had not come forth with sufficient grounds for reopening the hearing. The Board affirmed that ruling. As set forth in the Board's brief (pp. 14–17) the Board acted well within its broad discretion in such matters, since petitioner's failure to appear at the hearing on March 25 was of his own volition or neglect; further, petitioner did not come forth with an adequate ground for reopening the hearing.

2. Petitioner now seeks to invoke the statutory procedure, in Section 10(e), for court direction of an opportunity to introduce additional evidence after entry of the Board's decision and order. However, petitioner has alleged no grounds for the grant of such extraordinary relief at this stage of the proceeding. For the gravamen of the contentions in petitioner's motion is identical to that urged by petitioner before the Board and in his brief to the Court, that is, that the Trial Examiner and the Board improperly refused to reopen the hearing before entry of the decision and order. Thus, petitioner raises but one circumstance which he has not heretofore raised before the Board and the Court. That circumstance consists of a contention that the party who called

Attorney Bradley's office on the morning of March 25, 1964, and left a message that the hearing had been cancelled, was a representative of the Department of Justice, Walter J. Sheridan, who assertedly had understood from a discussion with the General Counsel's office that the hearing had been postponed. However, assuming Sheridan was the caller, petitioner does not show, nor could he, that this caused or excused Attorney Bradley's inordinate delay in replying to the Chief Trial Examiner's inquiry as to why he had not appeared at the hearing. Moreover, petitioner now relies on a circumstance which was within his knowledge throughout these proceedings. Thus, in his motion and the affidavits attached thereto petitioner states that Attorney Bradley knew on the morning of March 25, 1964, that the message regarding the postponement had been left at his office by Sheridan of the Department of Justice. Assuming this, petitioner thus chose not to reveal the caller to the Trial Examiner or the Board and give them an opportunity to consider the significance, if any, of the caller's identity. Furthermore, petitioner engaged in flagrant and unexplained delay in submitting such information to this Court, not revealing the identity of the caller in its brief filed in March 1965 and filing the instant motion only after the Court had set the case down for argument (February 3, 1966). Finally, petitioner continues to give no indication of any specific material evidence he seeks to introduce if the Court remands the case to the Board. Petitioner, therefore, provides no basis for a determination that the interest of justice compels that additional evidence be heard; and petitioner avowedly does not seek to cross examine the witnesses who were called by the General Counsel and whose testimony established petitioner's violation of the Act.

In short, petitioner has filed a motion to adduce additional evidence on grounds already raised before the Board and presented to the Court in the review proceeding. Insofar as petitioner asserts newly-discovered evidence which would warrant the granting of such a motion, it consists solely of information in petitioner's possession throughout these proceedings. Petitioner does not explain the significance of such information; nor does he explain his dilatory presentation of it. In these circumstances, he may not invoke the information to reopen the proceedings and thereby delay their consideration by the Court. *Southern Furniture Mfg. Co.* v. *N.L.R.B.*, 194 F. 2d 59, 62–63 (C.A. 5); *N.L.R.B.* v. *Southern Bleachery & Print Works*, 257 F. 2d 235, 241 (C.A. 4); *N.L.R.B.* v. *Perry Lumber Co.*, 244 F. 2d 17, 18 (C.A. 4); *Metal Blast Inc.* v. *N.L.R.B.*, 324 F. 2d 602, 604 (C.A. 6); compare, *S. D. Warren Co.* v. *N.L.R.B.* (C.A. 1), No. 6452, decided November 8, 1965 (60 LRRM 2385, 2386); *Local 130, IUE, AFL–CIO* v. *McCulloch*, 345 F. 2d 90, 95 (C.A.D.C.).

For the reasons stated above we respectfully submit that this Court should deny petitioner's motion to adduce additional evidence.

Respectfully submitted,

ARNOLD ORDMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
MARCEL MALLET-PREVOST,
Assistant General Counsel,
GLEN M. BENDIXSEN,
MARTIN R. GANZGLASS,
Attorneys,
National Labor Relations Board.

DECEMBER 1965.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 268

EDWARD G. PARTIN, BUSINESS AGENT, GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL NO. 5, ETC., ET AL.

Petitioners,

versus

NATIONAL LABOR RELATIONS BOARD

Respondent

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

TEDDY W. AIRHART, JR.
208 ST. LOUIS STREET
BATON ROUGE, LOUISIANA

WILLIAM C. BRADLEY
P. O. BOX 475
BAKER, LOUISIANA

ATTORNEYS FOR PETITIONER

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 268

EDWARD G. PARTIN, BUSINESS AGENT, GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN, & HELPERS OF AMERICA, LOCAL NO. 5, ETC., ET AL,

Petitioners.

versus

NATIONAL LABOR RELATIONS BOARD,

Respondent

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner prays that this Court grant a rehearing of it's Order of October 10, 1966, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Fifth Circuit in the above entitled case as prayed for in the petition, filed June 20, 1966.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

Under the provisions of section 10 (e) of the National Labor Relations Act, as amended (29 U.S.C. 151, et seq.) counsel for petitioner respectfully submits that he is entitled to a rehearing to adduce additional evidence. A reasonable ground for petitioner's failure to produce pertinent evidence in the March 25th hearing has been shown to be his reliance on a telephone call petitioner received from Mr. Walter Sheridan of the United States Department of Justice, notifying petitioner that the hearing was to be cancelled. (See Appendix "C" to printed record). Relying on this call, counsel for petitioner did not show up for the hearing which he justifiably felt had been cancelled.

A refusal to allow petitioner to call witnesses in his behalf, and participate in the hearing is a violation of the fundamental principles inherent in due process of law. As was stated by the Court in the case of NLRB v. Prettyman, 117 Fed.2d 786, 790:

> "An employer is entitled to a hearing of and decision on the charges against him according to the fundamental principles that inhere in due process of law, and indispensable requisities of such hearings are that the course of proceedings shall be appropriate to the case and just to the employer, that he shall be notified of charges in time to meet them and shall have an opportunity to be heard and cross-examine the witnesses against him and shall have time and opportunity at a convenient place, after the evidence against him is produced and known to him to produce evidence and witnesses to refute the charges, and that the decision of the Board shall be governed by and based upon the evidence produced at the hearing."

Petitioner has shown reasonable grounds for believing that the hearing of March 25, had been cancelled and should thus be allowed a chance to present his evidence as a matter of due process of law. See also Mississippi Valley Structural Co. v. NLRB, 145 F2d 664 (1944).

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that a rehearing be granted and that upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Fifth Circuit.

Respectfully submitted,

Teddy W. Airhart, Jr.
Counsel for petitioner

William C. Bradley
Counsel for petitioner

Dated: Thursday, October 27, 1966

CERTIFICATE OF COUNSEL

We, Teddy W. Airhart, Jr. and William C. Bradley, attorneys for petitioner, Edward G. Partin, certify that a copy of the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

TEDDY W. AIRHART, JR.

WILLIAM C. BRADLEY

CERTIFICATE

We, Teddy W. Airhart, Jr. and William C. Bradley, attorneys for petitioner, Edward G. Partin, certify that a copy of the above and foregoing petition for rehearing has this date been served upon David L. McComb, Esq. for the General Counsel, Roy Maughan and J. H. Bankston, Esqs., Baton Rouge, Louisiana, attorneys for respondent, and Thurgood Marshall, Esq., Solicitor General, in care of the Department of Justice, Tenth and Constitution Avenue, Washington, D.C.

Baton Rouge, Louisiana, this, the 28th day of October, 1966.

TEDDY W. AIRHART, JR.

WILLIAM C. BRADLEY